

24.08.2023
Court No.13
Item No.10
AP

FMA 441 of 2021
With
IA No.: CAN 1 of 2019 (Old No.: CAN 4812 of 2019)
With
CAN 2 of 2020 (Old No.: CAN 880 of 2020)
With
CAN 3 of 2021

Smt. Soma Pratihari and Anr.
Vs.
The State Bank of India and Ors.

Mr. Sumitava Chakraborty

... For the Appellants.

Mr. Debasis Saha
Mr. Hemraj Adhikari
Ms. Srabanti Das

... For the SBI.

1. The bank has served notice on respondent No.4, who is the original borrower and the husband of the appellant No.1/Smt. Soma Pratihari. There is no representation on his behalf.

2. Three coordinate Benches have made efforts to remedy the grievances of the appellants/writ petitioners and worked out a settlement with the bank. The bank has in certain terms, stated that approximately Rs.20 lakhs is due and payable in their loan account from the borrower/husband. Even if the appellants, who are neither borrowers or co-obligants, are willing to pay the same, the title deeds of the secured asset cannot be returned to the appellants.

3. This Court notices that the original borrower was the respondent No.4, who had mortgaged her residential

property to secure the loans obtained from the respondents/State Bank of India. The said loan became a non-performing asset. The bank issued notice to enforce their security under the provisions of the SARFEASI Act, 2002.

4. In the meantime matrimonial disputes cropped up between the appellant No.1 and her husband, the borrower 4th respondent. The appellants/wife and daughter of respondent no.4 approached the Writ Court stating that if the bank enforce its security and puts up the same for sale, the appellants would be on the streets without a home.

5. The Single Bench dismissed the writ petition on the ground that the bank could not be prevented from enforcing its security under the SARFEASI Act. The matrimonial disputes between the borrower and his wife, the appellant herein, cannot stand in the way of a bank recovering its lawful dues from its borrower.

6. In the backdrop of the above facts, notwithstanding sincere efforts being made by three coordinate Benches, this Court finds that no relief can be granted to the appellants. The respondent No.4 husband is obviously least bothered.

7. Leaving open remedies for the appellants against the respondent No.4 to be pursued in accordance with law inter alia for residence under the PWDV Act 2005, the

appeal shall stand dismissed. The impugned order dated 11th March, 2019 passed by the Single Bench in WP No.4681 (W) of 2018 is affirmed.

8. In view of the dismissal of the main appeal, connected pending application, if any, shall also stand disposed of.

9. There shall be no order as to costs.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)